



**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH**
Washington, D.C. 20570

Via email

April 20, 2023

Re: FOIA Request NLRB-2023-001254

Dear Zane Farr (Communication Workers of America):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on April 11, 2023, in which you seek “all representation election reports from 1961 to 1994 in electronic format.” You assumed financial responsibility for the processing of your request in the amount of \$37.00.

We acknowledged your request on April 18, 2023. Also, in a telephone call from a member of the FOIA staff on April 18, 2023, you were notified that the 1961 to 1994 election information you seek predates our current electronic case tracking system, NxGen, which generally contains NLRB unfair labor practice case records and representation case/election data from 2011 to the present.

Please be advised that pursuant to the Agency’s record retention and disposition policy, records that pre-date NxGen are generally retained for a six-year period, which commences at the close of the calendar year during which the case is closed. The records are then destroyed, unless they are selected for permanent retention based on their legal significance.

Notwithstanding the record retention and disposition policy, a search inquiry was directed to the Agency’s Division of Operations-Management, which oversees the Regions’ handling of representation cases. That office confirmed that there are no election reports or datasets responsive to your request in the requested time frame.

In a further effort to locate any election data in your requested time frame, a member of the FOIA staff conducted a search of the Agency’s public website, specifically, the Reports > Historical Reports > Annual Reports page: <https://www.nlr.gov/reports/agency-performance-reports/historical-reports/annual-reports>. This webpage contains links to Annual Reports from 1936 through 2009. The reports contain aggregated election results by state and by industry, not by individual case. Accordingly, while only partially responsive to

your request, these reports are the only and best available information that the Agency maintains regarding older election data in this time frame.

For the purpose of assessing fees, we have placed you in Category A, commercial use requester. This category refers to requests “from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(v). Consistent with this fee category, you “will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.” 29 C.F.R. § 102.117(d)(2)(ii)(A). Charges are \$9.25 per quarter-hour of professional time. 29 C.F.R. § 102.117(d)(2)(i).

Because the records are on the Agency’s website and available to the public, there is no charge for the processing of this request.

You may contact Jodilyn Breirather, the FOIA Specialist who processed your request, at (414) 930-7208 or by email at Jodilyn.Breirather@nrlb.gov, as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

Kristine M. Minami, FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nrlb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt, Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nrlrb.gov

Any appeal must be postmarked or electronically submitted within 90 calendar days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ *Synta E. Keeling*

Synta E. Keeling
FOIA Officer